IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 109 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMIRMIYA PIRSHAHAB SAIYAD

Versus

STATE OF GUJARAT

Appearance:

MR MTM HAKIM for Petitioners

MR P.K. SHUKLA, A.G.P for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 2, 5

MR PRANAV G DESAI for Respondent No. 3

MR YF MEHTA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/03/2001

ORAL JUDGEMENT

1. Rule. Learned Advocate Mr.Y.F.Mehta appearing on

caveat waives service of rule on behalf of respondent no. 4. Respondent no. 5 has expired. Mr. P.K. Shukla appears for respondent no. 1 and waives service of rule. Mr. P.G. Desai for respondent no. 3 waives service of rule. Mr.M.T.M.Hakim deletes respondent no.2.

2. In the facts of the case this matter is taken up for final hearing.

3. By this Revision Application the revisioners original defendant no. 5 and 6 seek to revise an order passed by Fourth Joint Civil Judge, (Senior Division), Baroda on 30th November, 2000 below Exh. 35 in Regular Civil Suit No. 400/97.

4. The facts of the case in a narrow compass can be stated thus; The present respondent no. 5 preferred Regular Civil Suit No. 400/1997 for declaration and injunction in respect of the suit property seeking a direction on defendant no. 2 to mutate the property in question to the name of the plaintiff. The plaintiff also tendered an application Exh. 5 for interim relief. The Trial Court by virtue of an order passed on 19th November, 1998 partly allowed the application and directed defendant no. 2 to mutate City Survey no. 252 and 27 to the name of the plaintiff and to certify that entry after following due process prescribed under the relevant law. In that suit present revisioners were not made a party, although they claim to have a right in the property. They therefore, tendered an application to join the suit as defendant vide Exh. 28 which came to be granted. On that very day, they tendered application Exh. 35 for review of the order passed below Exh. 5. The Trial Court rejected that application observing that if the order passed by the predecessor in office vide order below Exh. 5 is reviewed, it would amount to sitting in appeal over that order which cannot be done. Therefore, aggrieved by the said order the party defendant has preferred this Revision Application.

5. Heard learned Advocates for the parties. Mr. Hakim places on record certified copy of Exh. 30 in Regular Civil Suit No. 400/1997 dt. 04.09.1999 whereby the plaintiff proposed to withdraw the suit which was objected to by the other side. The only order that is passed below that application is "kept for orders". Mr. Hakim places on record Exh. 31, a purshis whereby attention of the Court is drawn to the fact that there is an attempt to play fraud on the Court. There also the Court has passed orders "kept for hearing". These two documents are taken on record.

6. Having regard to the contentions raised before this Court all that transpires is that the Court below has rejected the application not on merits but only on a premise that it has no jurisdiction to review its own order. Although these observations are not made in clear terms, but the language employed by the Trial Court reflects that the Court rejected the application only on this premise. The Court below, in the opinion of this Court, was in error in holding that it can not review its order. It has to decide such application on merits. This order therefore cannot be permitted to stand in light of the fact that the Court below has not applied its mind to the question of review and has not given a verdict on merits. In view of this, this is a fit case where the order impugned herein is required to be set aside with a direction the Court below to decide the application for review on merits.

7. For the reasons stated above this Revision Application deserves to be allowed and the same is allowed. The order impugned that is order passed below Exh. 35 in Regular Civil Suit No. 400/1997 on 30th November, 2000 is hereby quashed and set aside. The Court below is directed to hear the review application on merits and give a verdict on merits, uninfluenced by this order.

8. Mr. Y.F. Mehta learned Advocate for respondent no. 5 states that respondent no. 4 will not transfer the property in question in any manner to any one or will not create any charge or encumbrance thereon till review application is decided by the Trial Court on merits. The Authority concerned are directed to maintain status-quo in respect of the entries in respect of the property in question.

9. Review Application will be decided by the Trial Court as early as possible, preferably within three months from receipt of writ of this Court. Rule made absolute. No Costs.

(A.L. DAVE,J.)

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